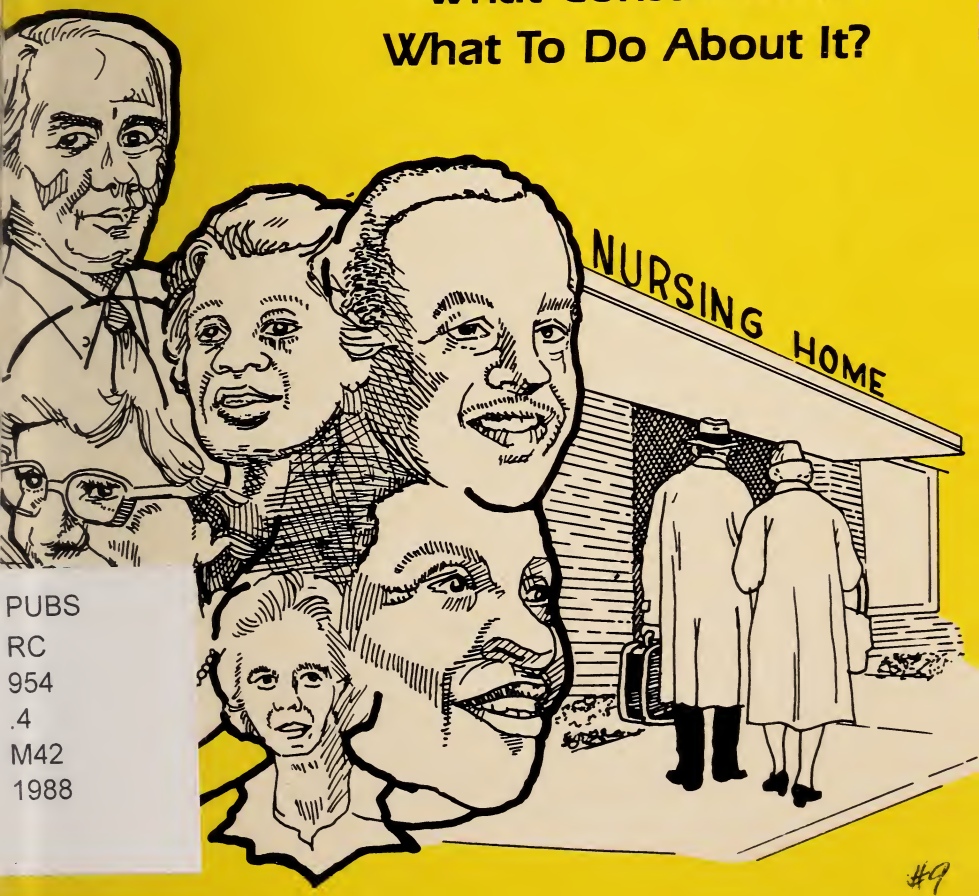
MEDICAID DISCRIMINATION AND NURSING HOME CARE

What Constitutes It?
What To Do About It?



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Assistance For Residents

This booklet has been prepared by the Health Standards and Quality Bureau of the Health Care Financing Administration in the U.S. Department of Health and Human Services to provide information for you as a nursing home resident and for your family to help you both know what constitutes Medicaid discrimination. It is also intended to provide you and your family with some general guidance on what to do about Medicaid discrimination when there may be a reason to think it has occurred.

Medicaid is a federally assisted and state operated and administered program which provides payment for the nursing home care of qualified low-income persons in need of such assistance. The program is authorized by the Social Security Act. The states are subject to federal laws, regulations, and guidelines governing Medicaid. However, the states determine the benefits covered, set eligibility standards, establish rates of payment for providers, and administer the Medicaid program.

Nursing home residents may establish eligibility for Medicaid by paying for care privately until their available financial resources become low enough to make them eligible for the program. Such individuals have, in effect, spent their income down to a specified eligibility standard by paying for nursing home care until their

bills become high enough in relation to available resources for them to become eligible for Medicaid program benefits. Residents are not required to continue paying privately once they are eligible for Medicaid.

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Medicaid Discrimination

You as a nursing home resident and your family should be aware that federal laws and regulations prohibit Medicaid discrimination. Nursing homes cannot discharge residents who exhaust their financial resources to the point of being eligible for Medicaid. Nursing homes also cannot demand that persons eligible for Medicaid or their families pay additional funds as a condition of admission to or continued stay in a nursing home.

There are two very important federal requirements relating to admission and discharge:

- Federal regulations prohibit the displacement of a resident once admitted to a nursing home participating in the Medicaid program on the basis of a change in source of payment for the resident. One example of a prohibited action would occur when a Medicaid-participating nursing home refuses to continue to care for a resident because the individual's source of payment has changed from private funds to Medicaid. A second example would be when a nursing home terminates one or more services to a resident who goes on Medicaid. It is important to note there should be evidence that the nursing home's termination of services was based on a financial rather than a medical reason.

• Federal laws prohibit a nursing home from requiring a Medicaid-eligible resident or the legal custodian or guardian of a resident to supplement Medicaid coverage for basic care and services. This includes requiring continuation of a "private-pay contract" once the resident becomes eligible for Medicaid; and/or asking for contributions, donations, or gifts as a condition of admission or continued stay.

Tips For Residents

It is important for you as a nursing home resident to remain alert and vigilant to various aspects of Medicaid discrimination which may occur within a facility. You can do this by being aware of your rights under Medicaid and becoming knowledgeable about the care which you receive. You should also be direct and open about discussing your concerns with the nursing home administrator and staff, your family, state and federal survey officials, and the nursing home ombudsman.

Here is a list of some things for you to think about:

- If you or your family signed a contract when you entered the nursing home, what did it say about paying for your care?
- Does the Medicaid program pay for your care in the facility?
- Do you know how the Medicaid program works and has anyone from the nursing home ever talked to you about it?
- Do you know all about how your care is paid for?
- If you pay for any "extra things", what are they and how are they paid for?
- If you were transferred to another room, did the move occur after you went on Medicaid?

- In most cases, does the staff treat all residents the same?
- Are people on Medicaid treated the same as those whose payment comes from a different source?
- Are Medicaid residents and private-paying residents placed throughout the facility or are they separated?
- If residents are separated, is there a difference in the care which they receive?
- Did you ever receive some care in the nursing home before going on Medicaid, which you still believe you need but no longer get?
- Is there a service or medical treatment which you think you need but do not receive?
- Are Medicaid residents and private-paying residents separated from each other in the dining room by being assigned to different tables?
- Can you sit where you want in the dining room?
- Do Medicaid residents and private-paying residents make food selections from the same menu or do they have different menus for meals?
- Are the snacks provided to Medicaid residents and private-paying residents the same?
- Are Medicaid residents and private-paying residents treated alike in terms of who performs nursing procedures for them?
- With respect to personal possessions, are Medicaid

residents and private-paying residents treated the same?

- Do Medicaid residents and private-paying residents participate in the same activities or are special activity rooms available only for private-paying residents?

Facts For Families

Because of vast differences in the health status of nursing home residents, the role of the family will differ greatly from situation to situation. Direct family involvement in monitoring the care of a nursing home resident is always desirable, but its importance increases significantly when the condition of a resident's health is very poor. Many of the questions listed in the preceding "Tips For Residents" section should also be considered by family members of nursing home residents. When a nursing home resident cannot deal with the questions, a family member definitely should.

You should be aware that residents are not required to continue paying privately for care when they are eligible for Medicaid. Furthermore, residents and their families are not required to supplement the Medicaid rate as a condition of admission or continued stay.

It is important for you as a family member of a nursing home resident to have a good familiarity with what Medicaid discrimination is and what can be done about it. When it is possible, you should discuss the subject in detail with your family member who resides in a nurs-

ing home, the administrator and staff of the nursing home, federal and state survey officials, and the nursing home ombudsman. In addition, you should become thoroughly familiar with the information in the "Where To Get Help" section of this booklet which comes next. You need to be prepared if the responsibility for dealing with Medicaid discrimination, when there may be a reason to think it has occurred, falls upon your shoulders.

Where To Get Help

Both state survey agencies and the regional offices of the Health Care Financing Administration conduct periodic inspections of nursing homes to determine if health, safety, and quality standards for participation in the Medicaid program are being met. During these nursing home inspections, residents should feel free to directly express any of their concerns relating to Medicaid discrimination.

The Administration on Aging in the U.S. Department of Health and Human Services provides financial assistance to State Agencies on Aging which have the major responsibility for providing advocacy on matters of concern to older persons. The State Agencies listed in this section are a part of the state governments and operate either as independent agencies reporting directly to the Governors, or as components of the human services' agencies in the states.

The State Agencies on Aging are required by the Older Americans Act to organize and operate a Long

Term Care Ombudsman Program which investigates and resolves complaints made by or on behalf of older individuals who are residents of nursing homes. The Ombudsman Program also monitors the implementation of federal and state laws and regulations with respect to nursing homes and provides information to public agencies regarding the problems of nursing home residents.

Here is where to write:

Dr. Oscar D. Tucker
Executive Director
Alabama Commission on Aging
502 Washington Ave.
Second Floor
Montgomery, Alabama 36130

Ms. Constance Sipe
Acting Executive Director
Older Alaskans Commission
P.O. Box C, MS-0209
Juneau, Alaska 99811-0209

Mr. Richard Littler
Acting Director
Aging & Adult Admin.
Arizona Dept. of Economic Security
1400 W. Washington St.
Phoenix, Arizona 85007

Mr. Herb Sanderson
Director
Office on Aging
Division of Aging and Adult Services
Main & 7th Streets
Donaghey Building, Suite 1428
Little Rock, Arkansas 72201

Ms. Alice Gonzales
Director
California Dept. of Aging
1600 K Street
Sacramento, California 95814

Mr. Gary Angerhofer
Director Aging & Adult Services Division
Department of Social Services
717 - 17th Street
Denver, Colorado 80218-6399

Ms. Mary Ellen Klinck
Director
Connecticut Department on Aging
175 Main Street
Hartford, Connecticut 06106

Ms. Eleanor L. Cain
Director
Delaware Division on Aging
Department of Health and
Social Services
1901 North Dupont Highway
2nd Floor
New Castle, Delaware 19720

Ms. E. Veronica Pace
Executive Director
District of Columbia Office on
Aging
Executive Office of the Mayor
1424 K Street, N.W.-Second Floor
Washington, D.C. 20005

Ms. Margaret Lynn Duggar
Program Staff Director
Aging and Adult Services
Department of Health and
Rehabilitative Services
Building 2 - Room 328
1323 Winewood Blvd.
Tallahassee, FL 32301

Mr. Fred McGinnis
Director Office of Aging
Department of Human Resources
Sixth Floor
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Atlanta, Georgia 30309

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335 Merchant Street, Rm. 241
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Director
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Statehouse, Room 114
Boise, Idaho 83720

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Director
Illinois Department on Aging
421 East Capitol Avenue
Springfield, Illinois 62701

Mrs. Jean Merritt
Commissioner
Indiana Department on Aging
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251 North Illinois
P.O. Box 7083
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46207-7083

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Iowa Department of Elder Affairs
236 Jewett Building
914 Grand Avenue
Des Moines, Iowa 50319

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Secretary
Kansas Department on Aging
610 West 10th Street
Topeka, Kansas 66612

Mrs. Prudence Moore
Director
Division for Aging Services
Department for Social Services
Cabinet for Human Resources
275 East Main Street
Frankfort, Kentucky 40621

Mrs. Sandra Adams
Director
Governor's Office of Elderly Affairs
P.O. Box 80374
Baton Rouge, Louisiana 70898-0374

Ms. Christine Gianopoulos
Director
Bureau of Maine's Elderly
Department of Human Services
State House - Station 11
Augusta, Maine 04333

The Honorable Rosalie S. Abrams
Director
Maryland Office on Aging
301 West Preston Street
Baltimore, Maryland 21201

Mr. Paul J. Lanzikos
Secretary
Executive Office of Elder Affairs
38 Chauncey Street
Boston, Massachusetts 02111

Ms. Olivia Maynard
Director
Office of Services to the Aging
P.O. Box 30026
Lansing, Michigan 48909

Mr. Gerald A. Bloedow
Executive Secretary
Minnesota Board on Aging
Metro Square Building-Suite 204
Seventh and Robert Streets
St. Paul, Minnesota 55101

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Mississippi Council on Aging
301 West Pearl Street
Jackson, Mississippi 39203-3092

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P.O. Box 1337
Jefferson City, Missouri 65102

Mr. Gene Huntington
Department of Family Services
Post Office Box 8005
Helena, Montana 59604

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Executive Director
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301 Centennial Mall South
P.O. Box 95044
Lincoln, Nebraska 68509

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Department of Human Resources
505 East King Street, Rm. 101
Carson City, Nevada 89710

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Director
Division of Elderly and Adult Services
New Hampshire Department of Health and Human Services
105 Loudon Street, Prescott Park Bldg. #3
Concord, New Hampshire 03301

Ms. Ann Zahora
Director
New Jersey Division on Aging
Department of Community Affairs
363 W. State Street
CN 807
Trenton, New Jersey 08625-0807

Dr. Stephanie FallCreek
Director
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224 East Palace Avenue
La Villa Rivera Bldg., 4th Floor
Santa Fe, New Mexico 87501

Dr. Eugene S. Callendar
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New York State Office for the Aging
Agency Building #2
Empire State Plaza
Albany, New York 12223-0001

Mrs. Elaine Stoops
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Division of Aging
Department of Human Resources
1985 Umstead Drive
Kirby Building
Raleigh, North Carolina 27603

Larry Brewster, D.S.W.
Director
Aging Services Division
North Dakota Department of Human Services
State Capitol Building
Bismarck, North Dakota 58505

Ms. Joyce F. Chapple
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Ohio Department on Aging
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Columbus, Ohio 43266-0501

Mr. Calvin Finch
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Services for the Aging
Department of Human Services
P.O. Box 25352
Oklahoma City, Oklahoma 73125

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Administrator
Senior Services Division
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Mrs. Adelaide Luber
Director
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Providence, Rhode Island 02903

Mrs. Ruth Seigler
Director
South Carolina Commission on Aging
915 Main Street
Columbia, South Carolina 29201

Mr. Mike Vogel
Administrator
Office of Adult Services and Aging
Richard F. Kneip Building
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Pierre, South Dakota 57501-2291

Mrs. Emily Wiseman
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Mr. O.P. "Bob" Bobbitt
Executive Director
Texas Department on Aging
P.O. Box 12786
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Robert Ward, Ph.D.
Director
Utah Division on Aging & Adult Services
120 North Second West
Salt Lake City, Utah 84145-0500

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Director
Vermont Office on Aging
Waterbury Complex
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Commissioner
Virginia Department for the Aging
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Assistant Secretary
Aging and Adult Services Administration
Department of Social and Health Services
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Olympia, Washington 98504

Ms. Susan M. Harman
Executive Director
West Virginia Commission on Aging
State Capitol Complex
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Charleston, West Virginia 25305

Ms. Donna McDowell
Director, Bureau on Aging
Department of Health and Social Services
1 West Wilson Street, Room 480
P.O. Box 7851
Madison, Wisconsin 53707

Mr. Scott Sessions
Director
Commission on Aging
Hathaway Building, First Floor
Cheyenne, Wyoming 82002

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Inspector General's Hot Line

If you have reason to believe that a nursing home is practicing Medicaid discrimination by engaging in any of the activities or practices previously mentioned in this booklet, the Department of Health and Human Services' Inspector General has a toll-free Hot Line which may be used to report such problems about which you are concerned.

The toll-free number is (800) 368-5779. In Maryland, please call (800) 638-3986.

If you prefer, you may send a letter describing any Medicaid discrimination problem to: HHS, OIG, Hot Line, P.O. Box 17303, Baltimore, Maryland 21203-7303.

Please **do not call** the Hot Line to ask Medicaid policy questions involving your personal eligibility for program payments.

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